

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

12FIVE CAPITAL, LLC,	§	NO. 1:24-CV-568-DAE
	§	
Plaintiff,	§	
	§	
vs.	§	
	§	
LEIGHTON MANAGEMENT, INC.,	§	
	§	
Defendant.	§	
	§	
	§	

**ORDER ADOPTING REPORT AND RECOMMENDATION, AND GRANTING
MOTION FOR DEFAULT JUDGMENT**

Before the Court is a Report and Recommendation filed by U.S. Magistrate Judge Susan Hightower. (Dkt. # 13.) On November 4, 2024, the Court referred Plaintiff 12five Capital, LLC’s (“Plaintiff” or “12five”) Motion for Default Judgment, or Alternatively Motion for Summary Judgment (Dkt. # 9) to Magistrate Judge Hightower. Magistrate Judge Hightower filed her Report and Recommendation (the “Report”) on May 16, 2025. Objections to the Report were due within 14 days after being served with a copy.¹ Neither party filed any objections to the Report.

¹ Despite failing to enter an appearance in this case, the Court requested that Defendant be served a copy. (See Dkt. # 14.)

BACKGROUND

The Court will recite the facts as stated by the Magistrate Judge.

Plaintiff sued Defendant Leighton Management, Inc. (“Defendant” or “Leighton”) for breach of contract and promissory estoppel on May 23, 2024. Plaintiff alleges that non-party Tia Global assigned its rights in accounts to Plaintiff, including Tia Global’s account with Defendant. (Dkt. 1 ¶¶ 8, 10, 12.) Plaintiff alleges that Defendant failed to make a payment under a Payment Agreement the parties executed with 12five, and 12five is entitled to collect payment. (Id. ¶ 22.) 12five previously sued Leighton on the same claims but dismissed the first action without prejudice under Rule 41. 12Five Capital, LLC v. Leighton Mgmt., Inc., No. 1:23-cv-01559-RP (W.D. Tex. Dec. 21, 2023). 12five served Leighton with the summons and Complaint on May 28, 2024. (Dkt. # 4.) Leighton has not appeared. The Clerk entered default against Leighton on August 26, 2024. (Dkt. # 7.) 12five seeks entry of a default judgment, damages, interest, attorneys’ fees, and costs.

On May 16, 2025, Magistrate Judge Hightower entered her Report on the motion for default judgment, recommending that the Court grant Plaintiff’s motion. (Dkt. # 13.) No objections were filed.

ANALYSIS

Where, as here, neither party objects to the Magistrate Judge's findings, the Court reviews the Report and Recommendation for clear error. United States v. Wilson, 864 F.2d 1219, 1221 (5th Cir. 1989).

After careful consideration, the Court adopts the Magistrate Judge's Report and Recommendation. The Court finds that the Magistrate Judge's conclusion is correct that Defendant has not entered an appearance in this case or otherwise responded, and that after considering the relevant factors, "default judgment is procedurally warranted." (Dkt. # 13 at 4.) Additionally, the Magistrate Judge's conclusion that Plaintiff has demonstrated the elements of its claim and that "[b]y failing to answer, Leighton has admitted these facts, and the facts as pleaded by 12five show that it had a valid contract that was breached by Leighton after 12five performed, causing damages," along with the Magistrate Judge's calculation of damages are neither clearly erroneous nor contrary to law. (Id. at 5.) Additionally, the Court agrees with the Magistrate Judge that Plaintiff is not entitled to attorney's fees.

CONCLUSION

Accordingly, for the reasons given, the Court **ADOPTS** the Magistrate Judge's Report and Recommendation (Dkt. # 13) as the opinion of the

Court, and **GRANTS IN PART AND DENIES IN PART** Plaintiff's Motion for Default Judgment, or Alternatively Motion for Summary Judgment. (Dkt. # 9). The Court thus **ENTERS DEFAULT JUDGMENT** against Defendant Leighton Management, Inc. under Rule 55(b), and awards 12five: (1) \$938,610 in damages; (2) \$405 in costs; and (3) pre-judgment and post-judgment interest, as set forth in the Report. The Court further **DENIES** 12five's request for attorneys' fees. The Clerk's Office is **INSTRUCTED** to **ENTER JUDGMENT** and **CLOSE THE CASE.**

IT IS SO ORDERED.

DATED: Austin, Texas, June 18, 2025.



David Alan Ezra
Senior United States District Judge